



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No. EMra11080510

██████████,
Complainant,

vs.

BOB EVANS,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On July 18, 2011, ██████████ ("Complainant") filed a complaint with the Commission against Bob Evans ("Respondent") alleging discrimination on the basis of race, in violation of the Indiana Civil Rights Law (IC 22-9, et seq) ██████████. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was discharged due to his race. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees of a different race were treated more favorably.

It is evident that Complainant falls within a protected class by virtue of his race and it is undisputed that he suffered an adverse employment action when Respondent discharged him on July 14, 2011. The only remaining questions are whether Complainant was meeting Respondent's legitimate business expectations or, if not, whether Respondent treated similarly-situated employees of a different race more favorably.

The investigative record shows that Complainant was not meeting Respondent's legitimate employment expectations. The evidence shows that Complainant was involved in a verbal and physical altercation with co-workers on Respondent's property. The evidence shows and witness testimony corroborates that a female co-worker (Caucasian) was yelling at Complainant regarding a food order and Complainant made the statement to this co-worker, "You better know how to fight."



Further, evidence shows that Complainant and another male co-worker (Caucasian) were outside hitting each other. Respondent claims that Complainant instigated this fight; however, Complainant contends that the co-worker hit him first. Nevertheless, Complainant was suspended and subsequently terminated for violating Respondent's policy regarding making threats, provoking a fight, and attempting bodily injury.

The evidence shows that Respondent treated Complainant less favorably than the other two, Caucasian co-workers who were also involved in the physical and verbal altercation. The investigative record and witness testimony corroborates that following the altercation Complainant was suspended for a couple weeks pending investigation, while the other employees involved in the altercation returned to work the next day and were neither suspended nor terminated.

According to Respondent's policies, a first offense of fighting, provoking a fight or attempting bodily injury results in termination. Furthermore, Respondent's policies state that threatening, abusive language, and insubordination warrants a written warning, and a second offense results in termination. While Complainant did commit policy violations that led to his termination, the evidence also shows that the Caucasian co-workers involved in the altercation violated several of Respondent's policies. Witness testimony corroborates that when the manager instructed the Caucasian employee to stay inside the restaurant until the situation diffused, she was insubordinate when she went outside and was involved in the physical fight. The disciplinary record shows that the other male employee involved in the altercation was inside the restaurant on his day off and went outside to confront Complainant after he had been told to leave the premises "before the fight broke out." The evidence shows both of Complainant's co-workers have had previous disciplinary action, which combined with this last incident may have led to their termination. Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

February 2, 2012
Date

Joshua Brewster, Esq.
Deputy Director
Indiana Civil Rights Commission